



C. Z

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

SEP 25 1992

Phillip Schillawski, Esq.
Squires, Sanders & Dempsey
4900 Society Center
127 Public Square
Cleveland, Ohio 44114-1304

Re: United States v. Amsted Industries

Dear Phil:

Enclosed is a copy of the signed and lodged Consent Decree.

Sincerely,

Richard J. Clarizio 9/24/92
Richard J. Clarizio

cc: L.Sperling
G.Sukys

CLARIZIO 6-0559



U.S. Department of Justice

United States Attorney
Northern District of Ohio

Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114-1704

September 15, 1992

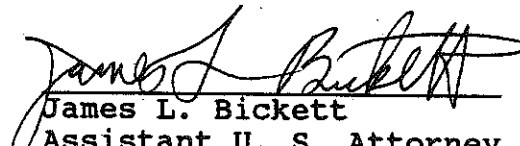
Rich Clarizio, Esq.
U. S. Environmental Protection
Agency
Region V
77 West Jackson Blvd.
Chicago, Illinois 60604

Re: United States v. Amsted Industries,
Inc.
Case No. C87-1284A

Dear Rich:

In reference to the above-captioned case, enclosed please find a filed-stamped copy of the Notice of Lodging and a received-stamped copy of the proposed consent decree.

Sincerely yours,


James L. Bickett
Assistant U. S. Attorney
(216) 522-4712

Enclosure

FILED

92 SEP 10 AM 10:11

CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

RECEIVED
SEP 10 1992

at o'clock M
CLERK OF COURTS
U. S. District Court, N.D.O.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMSTED INDUSTRIES, INC.
dba AMERICAN STEEL FOUNDRIES,

Defendant.

CASE NO. C87-1284A

JUDGE THOMAS D. LAMBROS

NOTICE OF LODGING OF PROPOSED CONSENT
DECREE PENDING SOLICITATION OF PUBLIC
COMMENT BY U.S. DEPARTMENT OF JUSTICE

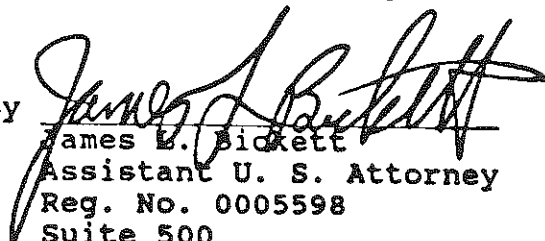
The United States of America, plaintiff, hereby notifies the court that the United States is lodging a Consent Decree for the above-named defendant. The Consent Decree is attached to this Notice.

The court should not sign the Consent Decree yet. Instead, the proposed Consent Decree should remain lodged with the court while the United States provides an opportunity for public comment as provided by Department of Justice regulations codified at 28 C.F.R. § 50.17. The Department will publish in

the Federal Register a notice that the proposed Consent Decree has been lodged with the court. The Notice will solicit public comment for a period of 30 days. During the comment period, no action is required of the court.

Respectfully submitted,

JOYCE J. GEORGE,
United States Attorney


By 
James L. Bickett
Assistant U. S. Attorney
Reg. No. 0005598
Suite 500
1404 East 9th Street
Cleveland, Ohio 44114

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Lodging of Proposed Consent Decree was served by regular U. S. mail this 10th day of September, 1992, upon the following:

Van Carson, Esq.
Squire, Sanders & Dempsey
4900 Society Center
127 Public Square
Cleveland, Ohio 44114-1304

Philip C. Schillawski, Esq.
Squire, Sanders & Dempsey
BancOhio National Plaza
155 East Broad Street
Columbus, Ohio 43215


James L. Bickett
Assistant U. S. Attorney

RECEIVED
SEP 10 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO at
EASTERN DIVISION

.....o'clock.....M
CLERK OF COURTS
U. S. District Court, N.D.O.

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. C87-1284A
)	
v.)	
)	JUDGE LAMBROS
AMSTED INDUSTRIES, INC. d/b/a)	
AMERICAN STEEL FOUNDRIES,)	
)	
Defendant.)	

CONSENT DECREE

WHEREAS, Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (hereinafter "U.S. EPA"), filed its Complaint in this action against Defendant, Amsted Industries, Inc. d/b/a American Steel Foundries (hereinafter "Defendant"), pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), alleging that Defendant violated requirements of RCRA and regulations promulgated thereunder, at their facilities in Alliance, Stark County, Ohio ("Alliance facility") (U.S. EPA Identification Number OHD 981 090 418) and in Mahoning County, Ohio ("Sebring facility") (OHD 017 497 587).

WHEREAS, the complaint alleges that the Alliance facility is a hazardous waste management facility at which Defendant has generated and treated hazardous wastes, as defined in 40 C.F.R. 260.10, and from which Defendant has transported hazardous waste, as defined in 40 C.F.R. § 260.10;

WHEREAS, the complaint alleges that Defendant did not have a final RCRA permit or "interim status" under Section 3005(e) of RCRA to treat hazardous waste at the Alliance facility, in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

WHEREAS, the complaint alleges that the Sebring facility is a hazardous waste management facility that includes, inter alia, a "landfill", as defined in 40 C.F.R. § 260.10; that the facility was and is a "land disposal facility" within the meaning of RCRA; and that pursuant to 42 U.S.C. § 6925(e)(1), on November 19, 1980, the Defendant achieved "interim status" to dispose of hazardous waste at the Sebring facility;

WHEREAS, the complaint alleges that Defendant withdrew Part A of its RCRA permit application for the Sebring facility on June 25, 1982; that on November 8, 1985, the Sebring facility lost interim status for failure to certify compliance with applicable groundwater and financial requirements set forth in 40 C.F.R. Part 265, Subparts F and H; that since the Defendant did not have a final RCRA permit or "interim status" for the Sebring facility, the landfill could then no longer lawfully be used to treat, store or dispose of hazardous waste and became subject to the closure and post-closure requirements of 40 C.F.R. Part 265, Subparts G, and N; and that the Defendant did not apply for interim status or a final RCRA permit for the Alliance facility;

WHEREAS, Defendant denies these referenced allegations in the Complaint and that the Alliance facility and Sebring facility are subject to the requirements of RCRA;

WHEREAS, Defendant intends to propose a closure plan that includes a recycling operation at the Sebring facility followed by use of the facility;

WHEREAS, Defendant's consent to this Decree is not an admission of fact, liability, or violation of law; and

WHEREAS, Plaintiff and Defendant, having recognized that settlement of this matter is in the public interest, have agreed to the entry of this Consent Decree.

NOW THEREFORE, without adjudication of any issue of fact or law and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION AND VENUE

The Court has jurisdiction over the parties and the subject matter of this action under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345, and 1355. The complaint states a claim upon which the Court can grant relief against Defendant, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). Venue in this judicial district is proper under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. § 1391(b).

II. STIPULATIONS

Solely for the purpose of this Decree, the parties stipulate to the following:

A. Amsted Industries, Inc. d/b/a American Steel Foundries is a corporation organized and existing under the laws of the State of Delaware and is licensed to do business in the State of Ohio.

B. Since at least November 1980, Defendant was, and currently is, the owner and operator of the Alliance facility, the American Steel Foundries facility located at 1001 East Broadway in Alliance, Stark County, Ohio, and the Sebring facility, the American Steel Foundries facility located at Lake Park Boulevard and Heacock Road in Smith Township, Mahoning County, Ohio.

C. From July 15, 1983, until January 31, 1986, the State of Ohio had Phase I interim authorization pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to administer a hazardous waste program in lieu of the Federal program in the State of Ohio. U.S. EPA retained enforcement authority under Section 3008(a) of RCRA and in matters related to the issuance of final RCRA Permits during this period. On January 31, 1986, the State of Ohio's Phase I interim authorization expired.

D. On June 30, 1989, the State of Ohio was granted Final Authorization by the Administrator of U.S. EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b) to administer a hazardous waste program in lieu of the Federal program. See 54

) Federal Register 27,170 (1989). As a result, facilities in Ohio qualifying for interim status under Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), are now regulated under the Ohio provisions found at Ohio Administrative Code ("Ohio Admin. Code") § 3745-50 et seq., in lieu of the Federal regulations set forth at 40 C.F.R. Part 265. In addition, on April 8, 1991, U.S. EPA published a notice in the Federal Register (see 56 Fed. Reg. 14203) regarding authorization of the State of Ohio to administer certain specified amendments to the RCRA program required as a result of the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). U.S. EPA retained enforcement authority under Section 3008(a) of RCRA and in matters related to the issuance of final RCRA Permits under HSWA for which the State has not been authorized. Accordingly, this Decree cites both the Federal regulations that were applicable when the Complaint was filed, and the equivalent regulations under Ohio's approved RCRA program, and seeks to enforce both Federal and State regulations, as applicable.

E. As set forth in Section V of this Decree, Ohio EPA is responsible for approving or disapproving any closure plan under this Decree, so long as Ohio is an authorized state.

F. The Parties stipulate that in paragraphs C, D, E, and F, of Section V of this Decree (Compliance Requirements), Defendant agrees to be bound by, comply with, and submit plans in accordance with the regulations referenced in those paragraphs solely for the purpose of this Decree and shall not contest the

applicability of such regulations to its Alliance and Sebring facilities in any proceeding to enforce this Decree or any appeal of any closure or post-closure plan required by this Decree, but Defendant does not agree that such regulations are otherwise applicable to its facilities.

III. APPLICABILITY

A. Each signatory to this Decree on behalf of Defendant certifies that he is fully authorized to enter into the terms and conditions of this Decree and to execute and legally bind Defendant to this Decree.

B. The provisions of this Consent Decree shall apply to and be binding upon the parties to this action, their agents, officers, directors, employees, successors, assigns, and all persons, firms, entities, and corporations acting under, through or for them, or in active concert or participation with them. Defendant shall be responsible for the acts of any of its agents, officers, directors, employees, successors, assigns, contractors, and consultants, which violate or cause the Defendant to violate the terms hereof. Defendant shall notify each successor in interest in writing of the existence and terms of this Consent Decree prior to any transfer of ownership or operation of any real property or operations subject to this Consent Decree, and shall notify U.S. EPA, the United States Attorney for the Northern District of Ohio, and the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of

Justice, in writing, of such proposed sale or transfer, at least two weeks in advance thereof, at the addresses set forth in Section VIII of this Consent Decree.

This Section does not relieve Defendant of its obligation to comply with the notice requirements at 40 C.F.R. § 270.72.

IV. DEFINITIONS

A. Unless otherwise stated, all terms used in this Consent Decree shall have the same meaning as used in RCRA and in the regulations promulgated thereunder, at 40 C.F.R. Parts 260 through 271 and Ohio Admin. Code §§ 3745-50 through 69.

B. "Alliance facility" means the American Steel Foundries facility located at 1001 East Broadway in Alliance, Stark County, Ohio.

C. "Sebring facility" means the American Steel Foundries facility located at Lake Park Boulevard and Heacock Road in Smith Township, Mahoning County, Ohio.

D. "Alliance Closure Plan" refers to any closure plan for the Alliance facility developed pursuant to Section V.C.

E. "Alliance Post-Closure Plan" refers to any post-closure plan for the Alliance facility developed pursuant to Section V.C.

F. "Sebring Closure Plan" refers to any closure plan for the Sebring facility developed pursuant to Section V.E.

G. "Sebring Post-Closure Plan" refers to any post-closure plan for the Sebring facility developed pursuant to Section V.E.

H. "Final approval or modification," as it relates to any plan subject to final approval by Ohio EPA, shall mean the final approved or modified plan following any timely and appropriate appeals taken as provided by Ohio law.

I. "Groundwater Quality Assessment Plan" refers to the plan developed pursuant to Section V.E.3.

J. "Groundwater Monitoring Plan" refers to the plan developed pursuant to Section V.E.7.

K. "Groundwater Sampling and Analysis Plan" refers to the plan developed pursuant to Section V.E.2.

V. COMPLIANCE REQUIREMENTS

A. ALLIANCE FACILITY - Generator Requirements:

1. Immediately upon entry of this Decree, Defendant shall perform waste determinations at the point of generation of the waste, for all wastes currently generated at the Alliance facility which do not have existing waste determinations, in accordance with the requirements of 40 C.F.R. § 262.11 and Ohio Admin. Code § 3745-52-11. Within sixty (60) days after entry of this Decree, Defendant shall submit to Ohio EPA and U.S. EPA the results of all new and existing waste determinations. In the event that the waste streams or processes at Defendant's Alliance facility change, Defendant shall immediately perform additional waste determinations as provided above, and submit the results to U.S. EPA and Ohio EPA within sixty (60) days. All analysis shall

be performed in accordance with requirements of U.S. EPA's "Test Methods for Evaluating Solid Waste, SW-846."

2. Within 5 days of the entry of this Decree, Defendant shall submit to U.S. EPA a Notification of Hazardous Waste Activity as a generator as required by 40 C.F.R. § 262.12.

3. Within 5 days of the entry of this Decree, Defendant shall comply with all manifest requirements as required by 40 C.F.R. § 262.20 through § 262.23 and Ohio Admin. Code §§ 3745-52-20 through 23.

4. Within 5 days of the entry of this Decree, Defendant shall comply with all container pre-transportation requirements as required by 40 C.F.R. §§ 262.30 through 262.33 and Ohio Admin. Code §§ 3745-52-30 through 33.

5. Within 5 days of the entry of this Decree, Defendant shall comply with all recordkeeping requirements of 40 C.F.R. § 262.40 and Ohio Admin. Code § 3745-52-40.

6. Within 5 days of the entry of this Decree, Defendant shall comply with all operating record requirements of 40 C.F.R. § 265.73 and Ohio Admin. Code § 3745-65-73. Defendant shall not be obligated to develop such operating record information for any time period prior to entry. Defendant shall, however, compile and submit to U.S. EPA, with a copy to Ohio EPA, any operating record information developed by the Defendant prior to entry of the type set forth in 40 C.F.R. § 265.73 and Ohio Admin. Code § 3745-65-73.

7. Within 5 days of the entry of this Decree, Defendant shall comply with reporting requirements of 40 C.F.R. §§ 262.41 and 265.75 and Ohio Admin. Code §§ 3745-52-41 and 3745-65-75 and shall file, or demonstrate to U.S. EPA that it has filed, annual reports for calendar years 1987, 1988, 1989, and 1990.

8. Immediately upon entry of this Decree, Defendant shall not store, treat or dispose of hazardous waste except as provided by the requirements of 40 C.F.R. § 262.34; Ohio Admin. Code § 3745-52-34, and 40 C.F.R. Part 268.

B. Transporter Requirements:

Defendant shall transport all hazardous waste in accordance with requirements of 40 C.F.R. § 263 et seq. and Ohio Admin. Code § 3745-63 et seq.

C. ALLIANCE FACILITY - Treatment, Storage and Disposal Requirements:

1. Immediately upon the entry of this Decree, Defendant shall cease any and all treatment, storage and disposal of hazardous waste at the Alliance facility, except as provided for in 40 C.F.R. § 262.34 and Ohio Admin. Code § 3745-52-34 or a valid hazardous waste treatment, storage, or disposal permit. *accumulation time*

2. Within 60 days of the entry of this Decree, Defendant shall develop and submit to Ohio EPA for review and approval, with a copy to U.S. EPA, a Closure Plan, in accordance with 40 C.F.R. §§ 265.111 through 265.116, and Ohio Admin. Code § 3745-66-11 through 16, for the Electric Arc Furnace Dust

Hazardous Waste Management Unit ("Alliance Closure Plan") at the Alliance facility.

3. If Ohio EPA does not approve the Alliance Closure Plan, Defendant shall submit to Ohio EPA, with a copy to U.S. EPA, a revised or modified Alliance Closure Plan in accordance with Ohio Admin. Code § 3745-66-12(D)(4),

4. Immediately upon receipt of final approval or modification of the Alliance Closure Plan by Ohio EPA, Defendant shall implement the Plan in accordance with the requirements and the schedule contained therein. Defendant shall submit a copy of the final approved Alliance Closure Plan to U.S. EPA within five (5) days of approval by Ohio EPA.

5. After implementation of the Alliance Closure Plan, only in the event that clean closure cannot be achieved, Defendant shall submit to Ohio EPA, with a copy to U.S. EPA, a Alliance Post-Closure Plan in accordance with the requirements of 40 C.F.R. §§ 265.117 through 265.120 and Ohio Admin. Code §§ 3745-66-17 through 20. If Ohio EPA does not approve the Alliance Post-Closure Plan, Defendant shall submit to Ohio EPA, with a copy to U.S. EPA, a revised or modified Alliance Post-Closure Plan, in accordance with 40 C.F.R. § 265.118(d)(4) and (f) and Ohio Admin. Code § 3745-66-18(D)(4) and (F). Immediately upon receipt of final approval or modification of the Alliance Post-Closure Plan by Ohio EPA, Defendant shall implement such Plan.

6. Within 75 days after entry of this Decree, Defendant shall submit to U.S. EPA and Ohio EPA certification that it has established financial assurance mechanisms for closure at the Alliance facility in accordance with 40 C.F.R. § 265.143 and Ohio Admin. Code § 3745-66-43. This certification shall include a description of the financial assurance mechanisms.

7. Within 75 days after entry of this Decree, Defendant shall submit to U.S. EPA and Ohio EPA documentation of compliance with the liability coverage requirements of 40 C.F.R. § 265.147 and Ohio Admin. Code § 3745-65-47.

8. Within thirty (30) days of the entry of this Decree, Defendant shall comply with all operating record requirements of 40 C.F.R. § 265.73 and Ohio Admin. Code § 3745-65-73. Defendant shall not be obligated to develop such operating record information for any time period prior to entry. Defendant shall, however, compile and submit to U.S. EPA, with a copy to Ohio EPA, any operating record information developed by the Defendant prior to entry of the type set forth in 40 C.F.R. § 265.73 and Ohio Admin. Code § 3745-65-73.

9. Within 15 days of the entry of this Decree, Defendant shall comply with the personnel training and emergency and contingency plan requirements of 40 C.F.R. §§ 265.16 and 265.52 through 56 and Ohio Admin. Code §§ 3745-65-16 and 65-52 through 56.

10. Within five (5) days after the entry of this Decree Defendant shall comply with the inspection requirements of 40 C.F.R. § 265.15 and Ohio Admin. Code § 3745-65-15.

D. SEBRING FACILITY - Closure and Post-Closure Requirements:

1. Within 75 days after the entry of this Decree, Defendant shall submit to Ohio EPA, with a copy to U.S. EPA, a Sebring Closure Plan for its Sebring facility that provides for closure as a landfill in accordance with 40 C.F.R. §§ 265.112 and 265.310, and Ohio Admin. Code §§ 3745-66-12 and 68-10, and other applicable requirements (except to the extent that Ohio EPA determines that a closure plan required by this subparagraph need not satisfy all the requirements of 40 C.F.R. § 265.310 and Ohio Admin. Code § 3745-68-10. Within ninety (90) days after the entry of this Decree, Defendant shall submit to Ohio EPA, with a copy to U.S. EPA, a Sebring Post-Closure Plan, that provides for compliance with the requirements of 40 C.F.R. §§ 265.117 through 265.120 and Ohio Admin. Code §§ 3745-66-17 through 20, in the event that "clean closure" of the Sebring facility cannot be achieved.

2. If Ohio EPA does not approve the Sebring Closure Plan or the Sebring Post-Closure Plan, Defendant shall submit to Ohio EPA, with a copy to U.S. EPA, a revised or modified Sebring Closure Plan and/or Sebring Post-Closure Plan, in accordance with Ohio Admin. Code § 3745-66-12(D)(4).

3. Immediately upon receipt of final approval or modification of the Sebring Closure Plan, Defendant shall implement such Plan in accordance with the requirements and the schedule contained therein. Immediately upon receipt of final approval or modification of the Sebring Post-Closure Plan, Defendant shall implement such Plan in accordance with the requirements and the schedule contained therein. Defendant shall submit a copy of each final approved plan to U.S. EPA within five (5) days of approval by Ohio EPA.

4. Within 90 days after entry of this Consent Decree Defendant shall submit to U.S. EPA and Ohio EPA certification that it has established financial assurance mechanisms for closure and post-closure care of and liability coverage for the Sebring facility, in accordance with 40 C.F.R. §§ 265.143 through 265.145 and 265.147 and Ohio Admin. Code §§ 3745-66-43 through 66-45 and 66-47. Each certification shall include a description of the financial assurance mechanism. Defendant shall maintain such liability coverage for as long as required under 40 C.F.R. Part 265, Subpart H, and Ohio Admin. Code § 3745-66-47.

E. SEBRING FACILITY - Groundwater Requirements:

1. All sampling and analysis procedures performed under this Decree shall conform to procedures contained in U.S. EPA publication "Test Methods for Evaluation of Solid Waste, SW-846."

2. Within thirty (30) days after entry of this Decree, Defendant shall develop a Groundwater Sampling and

Analysis Plan in accordance with the requirements of 40 C.F.R. § 265.92 and Ohio Admin. Code § 3745-65-92, and shall follow such Groundwater Sampling and Analysis Plan in accordance with the schedule in the approved Groundwater Quality Assessment Plan.

3. Within thirty (30) days after entry of this Consent Decree, Defendant shall submit to U.S. EPA, with a copy to Ohio EPA, a Groundwater Quality Assessment Plan for the Sebring facility in accordance with 40 C.F.R. § 265.93 and Ohio Admin. Code § 3745-65-93. Within 30 days of receipt of comments from U.S. EPA identifying any deficiencies in the Groundwater Quality Assessment Plan, Defendant shall submit to U.S. EPA, with a copy to Ohio EPA, a revised Plan that corrects any deficiencies identified by U.S. EPA. The Defendant shall implement the U.S. EPA approved or modified Groundwater Quality Assessment Plan within 30 days of U.S. EPA approval of the Plan.

4. Within thirty (30) days after approval of the Groundwater Quality Assessment Plan in paragraph E.3 above, or pursuant to any schedule contained therein, Defendant shall design, install and maintain a groundwater monitoring system capable of yielding groundwater samples for analysis in accordance with 40 C.F.R. § 265.91 and Ohio Admin Code § 3745-65-91 and the approved Groundwater Quality Assessment Plan.

5. Defendant shall submit to U.S. EPA and Ohio EPA written reports containing the results of all analyses conducted pursuant to the Groundwater Quality Assessment Plan of paragraph

E.3 above, in accordance with the reporting requirements set forth therein and at 40 C.F.R. §§ 265.93 and 265.94 and Ohio Admin. Code §§ 3745-65-93 and 94.

6. In the event that the sampling and analysis conducted pursuant to the approved Groundwater Quality Assessment Plan for the Sebring facility reveals that hazardous waste or hazardous constituents have entered the groundwater, Defendant shall so notify U.S. EPA and Ohio EPA in writing within ten (10) days, and shall continue to monitor groundwater in accordance with the requirements of 40 C.F.R. § 265.93(d)(7), Ohio Admin. Code § 3745-65-93(d)(7) and the Groundwater Quality Assessment Plan.

7. In the event that the sampling and analysis conducted pursuant to the approved Groundwater Quality Assessment Plan at the Sebring facility reveals that neither hazardous waste nor hazardous constituents have entered the groundwater, Defendant shall submit to U.S. EPA, with a copy to Ohio EPA, a Groundwater Monitoring Plan in accordance with 40 C.F.R. §§ 265.90 and 265.91 and Ohio Admin. Code §§ 3745-65-90 and 91. Within 30 days of receipt of written comments from U.S. EPA identifying deficiencies in the Groundwater Monitoring Plan the Defendant shall submit to U.S. EPA, with a copy to Ohio EPA, a revised Plan that corrects any deficiencies identified by U.S. EPA. The Defendant shall implement the U.S. EPA approved or modified Groundwater Monitoring Plan within 30 days of U.S. EPA approval of the Plan.

8. Defendant shall comply with all interim status requirements relating to groundwater set forth in 40 C.F.R. Part 265, Subpart F and Ohio Admin. Code § 3745-65, et seq.

F. SEBRING FACILITY - General Operating Requirements:

1. Immediately upon entry of this Consent Decree, Defendant shall cease all treatment, storage, and disposal of any solid or hazardous waste, as defined by 40 C.F.R. § 261, at the Sebring facility, except as provided for and in compliance with the approved Closure Plan required by paragraph D of this Section, and under Ohio and federal statutes and regulations.

2. Within 15 days of the entry of this Decree, Defendant shall comply with the reporting requirements of 40 C.F.R. § 265.75 and 3745-65-75 and shall file, or demonstrate to U.S. EPA that it has filed, annual reports for calendar years 1987, 1988, 1989, and 1990.

3. Within 5 days of the entry of this Decree, Defendant shall provide security at its Sebring facility in accordance with 40 C.F.R. § 265.14 and Ohio Admin. Code § 3745-65-14.

4. Within 15 days of the entry of this Consent Decree, Defendant shall comply with the general inspection requirements at its Sebring facility in accordance with 40 C.F.R. § 265.15 and Ohio Admin. Code § 3745-65-15.

5. Within 30 days of the entry of this Consent Decree, Defendant shall provide personnel training for its

Sebring facility in accordance with 40 C.F.R. § 265.16 and Ohio Admin. Code § 3745-65-16.

VI. CIVIL PENALTY

1. The Defendant shall pay a civil penalty of \$250,000 to the United States, in full settlement of the United States' claims for civil penalties made in the Complaint. The Defendant shall pay the civil penalty in installments as follows:

November 30, 1991	---	\$50,000
February 29, 1992	---	\$75,000
May 31, 1992	---	\$75,000
August 31, 1992	---	\$50,000

Following entry of this Decree, the Defendant shall make each payment in the form of a cashier's or certified check payable to the "Treasurer of the United States of America," and shall tender each payment to the United States Attorney for the Northern District of Ohio, at the address set forth in Section VIII. If any payment date should occur prior to entry of this Decree, the Defendant shall make such payment in the form of a cashier's or certified check payable to "Clerk, Northern District of Ohio," pursuant to the Agreed Order dated October 23, 1991. Each check shall reference United States v. Amsted Industries, Inc. Civ. No. 87-1284A.

2. If the Decree is entered by the Court after November 30, 1991, and Defendant has made payment(s) to the Registry of the Court pursuant to the Agreed Order dated October 23, 1991, such monies, plus interest earned thereon, shall be transferred to the United States within a reasonable period after entry of this Decree by the Clerk of the Court.

3. If the Decree is entered by the Court after November 30, 1991, and the Defendant has failed to make payment(s) to the Registry of the Court pursuant to the Agreed Order dated October 23, 1991, defendant shall pay plaintiff all monies overdue within five days of entry of this Decree, plus interest on the delinquent amount at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717.

4. At the time of any payment, a copy of such check shall be sent to U.S. EPA and the United States Department of Justice, at the addresses set forth in Section VIII.

VII. STIPULATED PENALTIES

A. Except as provided in paragraphs B and C of this Section, Defendant shall pay the following stipulated penalties for each failure to comply with any requirement set forth in Sections V.C.-V.E. of this Decree or set forth in any plan required to be developed and implemented pursuant to Sections V.C.-V.E.:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st through 14th day	\$ 500
15th through 29th day	\$ 1500
30th day and each day thereafter	\$ 3000

B. Defendant shall pay the following stipulated penalties for each failure to submit timely a plan or report in accordance with the requirement of this Decree, including any plans or

reports required to be developed and implemented pursuant to Sections V.C.-V.E.:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st through 14th day	\$ 300
15th through 29th day	\$ 750
30th day and each day thereafter	\$ 1500

Provided, however, that where Defendant has submitted on time a first submission of the Groundwater Quality Assessment Plan to U.S. EPA pursuant to this Decree which U.S. EPA contends is incomplete or otherwise deficient, Defendant shall have a single, thirty (30) day time period from receipt of U.S. EPA's written notice of deficiencies to cure such deficiencies without accruing stipulated penalties. If U.S. EPA determines that the second submission of the Groundwater Quality Assessment Plan does not cure the noted deficiencies or makes other new changes or modifications that U.S. EPA deems deficient, defendant shall be subject to stipulated penalties from the date U.S. EPA serves written notice of the deficiencies.

C. Defendant shall pay the following stipulated penalties for any failure to comply with any requirement not addressed in paragraphs A and B above:

<u>Period of Noncompliance</u>	<u>Penalty Per Day</u>
1st through 14th day	\$ 200
15th through 29th day	\$ 400
30th day and each day thereafter	\$ 800

D. Written Demand for Stipulated Penalties

1. Defendant shall pay the stipulated penalties in this Section upon written demand by EPA; however, penalties accrue on the day after performance was due or the day of a violation (except as provided in paragraph B of this Section), not from the date of the demand, and shall continue to accrue through the final day of correction of the noncompliance. EPA may decide not to demand the full amount of stipulated penalties accrued. EPA's decision whether to demand stipulated penalties is committed to its discretion and is not subject to Section XVI (Dispute Resolution) of this Decree or judicial review.

2. For the purposes of this Decree, U.S. EPA may waive its right to demand a stipulated penalty if and only if U.S. EPA notifies Defendant, in writing, of the specific violations for which stipulated penalties are being waived.

3. In its Progress Report, Defendant shall report all instances in which it failed to conform to a deadline or other requirement of this Decree during the months that are the subject of the Progress Report.

E. Stipulated penalties owed to the United States under this Section shall be paid by certified check payable to the "Treasurer of the United States of America". Payment shall be tendered to the United States Attorney, Northern District of Ohio, at the address set forth in Section VIII, within fifteen (15) days after the noncompliance period. A copy of the check shall be mailed to Department of Justice and U.S. EPA, Region V,

at the addresses set forth in Section VIII. Each check shall reference United States v. Amsted Industries, Inc. Civ. No. 87-1284A.

F. The stipulated penalties set forth above shall not limit other remedies or sanctions, including contempt proceedings, which may be available to the Plaintiff by reason of the Defendant's failure to comply with the requirements of this Consent Decree or RCRA, except that the Defendant shall not be liable for both stipulated penalties and statutory penalties for the same violation.

VIII. SUBMITTALS

A. Any document or other item required by this Decree to be submitted to U.S. EPA, Ohio EPA, the United States Attorney for the Northern District of Ohio, or the United States Department of Justice, shall be mailed or otherwise delivered to the following persons at the addresses specified below:

As to U.S. EPA:

Chief, RCRA Enforcement Branch, 5HR-12
U.S. EPA, Region V
77 West Jackson Blvd.
Chicago, Illinois 60604
Attn: Kimberly Ogle

Chief, SWERB Section V
Office of Regional Counsel
U.S. EPA Region V, 5CS-TUB3
77 West Jackson Blvd.
Chicago, Illinois 60604
Attn: Richard Clarizio
(cover letter only)

As to Ohio EPA:

Ohio EPA
Chief, Division of Solid and Hazardous Waste
1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43265-0149

Ohio EPA
Division of Solid and Hazardous Waste
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087-1969

As to the United States Attorney:

Civil Division
Office of the United States Attorney for
the Northern District of Ohio
Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114-1704
Attn: James L. Bickett
(only submissions related to force majeure,

dispute resolution, or stipulated penalties)

As to United States Department of Justice:

United States Department of Justice
Environment and Natural Resources Division
Chief, Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Attn: Gregory L. Sukys
Re: DJ # 90-7-1-397
(only submissions related to force majeure,
dispute resolution, or stipulated penalties)

B. Any correspondence that is to be directed to the
Defendant shall be sent to the following:

American Steel Foundaries
10 South Riverside Plaza - 10th Floor
Chicago, Illinois 60606
Attn: C.A. Ruud

American Steel Foundaries
1001 East Broadway
Alliance, Ohio 44601
Attn: W.D. Heestand

Edward D. Brosius, Esq.
Amsted Industries, Inc.
44th Floor - Boulevard Towers South
205 N. Michigan Ave.
Chicago, Illinois 60601
(only submissions related to force majeure,
dispute resolution, or stipulated penalties)

C. Delivery shall be considered complete upon deposit of
the material at issue in the U.S. Mail, certified mail, or with a
reputable delivery service.

D. All plans required by this Decree shall become
enforceable requirements of this Decree upon final approval by
U.S. EPA or final approval or modification by Ohio EPA, as
appropriate, and written notification of such approval to the
Defendant. Closure plans may be amended in accordance with 40

C.F.R. § 265.112(c), Ohio Admin. Code § 3745-66-12(C), and if U.S. EPA and Defendant agree in writing, other plans required by this Decree may be modified. Section XV of this Decree (Modifications) shall not apply to such amendments or modifications. An amended or modified plan shall be fully enforceable under this Decree.

IX. ACCESS TO THE FACILITY AND SPLIT SAMPLES

A. U.S. EPA, Ohio EPA, and their respective employees, contractors, and authorized representatives shall have access to the Sebring and Alliance facilities at all reasonable times for the purposes of inspecting, sampling, and evaluating compliance with the provisions of this Decree, including the right to photograph and review and copy sampling data and other records. In addition, Defendant shall require by contract that such persons have the authority to inspect at all reasonable times laboratories used by Defendant or its contractors for analyses. U.S. EPA and Ohio EPA employees, contractors, and other authorized representatives shall have the right to take splits of any samples taken by the Defendant or its contractors in the course of performing work required by this Consent Decree. U.S. EPA shall be given at least ten (10) days written notice prior to any sampling, other than sampling for waste determination under Section V of this Decree.

B. This Section in no way limits any right of entry available to U.S. EPA or Ohio EPA pursuant to applicable Federal

or State laws, regulations, or permits, including, but not limited to, Section 3007 of RCRA, 42 U.S.C. § 6927.

X. REPORTING

A. Defendant shall provide written Progress Reports to U.S. EPA on the implementation of the Decree.

B. Each Progress Report is to be submitted to U.S. EPA no later than ten (10) days after the end of every other calendar month beginning with the month following entry of this Decree. At a minimum, each Progress Report shall contain the following:

1. A detailed summary of all results received by the Defendant of sampling and tests performed pursuant to this Decree regarding the Alliance and Sebring facility;

2. A description of all actions required by the Decree that were completed during the past two months, and all such actions that are scheduled for the next two months; and

3. An identification of any actions required by the Decree that were not completed as required and any problems or anticipated problems, including the scheduled completion date, the new anticipated completion date, the reason(s) for the delay and the actions taken to minimize the delay. Such notification of any problems or delays does not excuse any noncompliance, nor excuse any stipulated penalties which may attach to such noncompliance.

C. One year after entry of this Decree, if U.S. EPA agrees, Defendant may submit a Progress Report less frequently, but at least each calendar quarter. This paragraph is not subject to

Section XVI (Dispute Resolution) or Section XV (Modification) of this Decree.

D. The foregoing written Progress Reports shall be submitted in addition to any draft and final plans or reports to U.S. EPA otherwise required by this Decree.

XI. RESERVATION OF RIGHTS AND OBLIGATION
TO COMPLY WITH ALL LAWS

A. Except as provided in Section XII of this Decree (Covenant Not To Sue), Plaintiff does not waive any rights or remedies, and this Decree is without prejudice to its rights and remedies, including, but not limited to: 1) the right to impose any permit requirements; 2) the right to take any action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, Pub. L. 99-499 ("CERCLA"); 3) the right to pursue remedies available to the United States for any violation by Defendant of this Decree, or of any federal or state law, regulation, or permit condition not specifically alleged in the Complaint and resolved by this Consent Decree; and 4) the right to require corrective action pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

B. This Decree in no way relieves Defendant of its responsibility to comply with all applicable federal, state and local laws, regulations, and permit conditions. This Decree is neither a permit nor a modification to a permit. Compliance with this Decree does not constitute satisfaction of RCRA permit requirements.

C. Nothing in this Decree shall be construed as a limitation on Defendant to conduct any activities pursuant to a valid RCRA permit, or any activities for which a permit is not required.

D. Nothing in this Decree, nor any actions taken thereunder, shall be construed as an admission by Defendant of violation of any provision of RCRA, or any other law or regulation.

E. Nothing in this Decree, nor any actions taken thereunder, shall be construed to limit any arguments or defenses Defendant may raise in any other action or proceeding, except an action or proceeding to enforce the terms of this Decree or any action or proceeding related to the closure and post-closure plans required by this Decree.

XII. COVENANT NOT TO SUE

A. In consideration of Defendant's agreement to perform the requirements of this Decree in accordance with the terms of this Decree, the United States covenants not to sue or take administrative action against Defendant for relief under Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), or the federally authorized Ohio hazardous waste program, for civil violations of RCRA at the Alliance and Sebring facilities which arose prior to entry of this Decree and were alleged in the Complaint.

B. The covenant set forth in this Section shall not become effective until Defendant complies with Section VI of this Decree (Civil Penalty).

C. This covenant does not limit in any way the United States' ability to seek judicial enforcement of the terms or conditions of this Decree.

D. This covenant does not limit in any way the United States' ability either to reopen this action to enforce this Decree or bring a new action, as set forth in Section XIX (Termination and Post-Termination Obligations) of this Decree.

XIII. PRECLUSION OF CLAIMS AGAINST THE HAZARDOUS SUBSTANCE RESPONSE TRUST FUND

Defendant agrees not to make any claims pursuant to Sections 111 and 112 of CERCLA, 42 U.S.C. §§ 9611 and 9612, or any other provision of law directly or indirectly against the Hazardous Substances Superfund established by CERCLA for costs incurred in complying with this Decree. Nothing in this Decree shall be deemed to constitute pre-authorization of a CERCLA claim within the meaning of 40 C.F.R. § 300.700(d). This provision is not intended to preclude any private right of action which Defendant may have against any third party under Section 107 of CERCLA.

XIV. COSTS

Each party to this action shall bear its own costs and attorney's fees in this action.

XV. MODIFICATIONS

No requirement or provision of this Decree shall be modified or revised except upon written agreement of the parties and subsequent order of this Court, or upon order of this Court under Section XVI (Dispute Resolution) of this Decree.

XVI. DISPUTE RESOLUTION

A. In the event that a dispute arises between the Parties with respect to any requirement of this Decree, then the position advanced by U.S. EPA shall be considered binding unless Defendant invokes the dispute resolution provisions of this section.

B. If in the opinion of any party there is a dispute with respect to the meaning or implementation of this Consent Decree, that party shall send a written notice to the other party which outlines the nature of the dispute and requests informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the notice was sent unless the Parties agree otherwise.

C. If the informal negotiations are unsuccessful, Plaintiff's position shall control unless Defendant files with the Court a petition which shall describe the nature of the dispute and include a proposal for its resolution. Defendant's petition must be filed no more than fifteen (15) days after termination of informal negotiations. Plaintiff shall then have twenty (20) days to respond to the petition. In any such dispute, Defendant shall have the burden of proving Plaintiff's position is arbitrary and capricious or otherwise not in accordance with law.

D. The pendency of any dispute under this Section shall not affect Defendant's obligation for timely performance of the work required under this Decree; except that the time period for completion of the work affected by a dispute shall be extended

for a period of time not to exceed the actual time taken to resolve any-good faith dispute if the parties agree that the performance of such work cannot reasonably continue during the dispute. Stipulated penalties shall continue to accrue during the informal and formal dispute resolution periods under this Section.

XVII. FORCE MAJEURE

A. A "Force Majeure" event for purposes of this Decree is defined as any event that is caused by circumstances beyond the control of Defendant, or any entity controlled by or under the common control of Defendant including the Defendant's consultants and contractors, and that Defendant could not have foreseen and prevented, that delays or prevents the performance of any obligation under this Decree.

B. When circumstances are occurring or have occurred that may cause a delay in meeting the schedule for completion of any activity required by this Decree (including the submission of reports pursuant to Section X of this Decree), whether or not due to a "Force Majeure" event, Defendant shall promptly -- in no event later than 24 hours (for verbal notification) and five days (for written notification) from the time the Defendant obtains information indicating that a delay might be encountered -- supply U.S. EPA with verbal and written notice that includes a detailed explanation of the reason(s) for and anticipated duration of any such delay; the measures taken and to be taken by

Defendant to prevent or minimize the delay; and the timetable for implementation of such measures. The Defendant shall adopt all reasonable measures to avoid or minimize any such delay.

Notification of any delay shall not alone extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties; however, failure to notify within the time period specified above shall constitute a waiver of any claim of "Force Majeure."

C. If the United States agrees that a delay is or was attributable to a "Force Majeure" event, the parties shall, by written agreement, modify the compliance schedule to provide such additional time as may be necessary to allow the completion of the specific phase of the required activity and/or any succeeding phase of the activity affected by such delay, not to exceed the actual duration of the delay.

D. If Plaintiff and Defendant are unable to agree as to whether the reason for the delay was a "Force Majeure" event, or on a stipulated extension of time, then the provisions of Section XVI (Dispute Resolution) shall apply. Defendant shall have the burden of demonstrating that the event was a "Force Majeure" event, that the duration of the delay caused by such event is or was warranted under the circumstances, and that, as a result of the delay, a particular extension period is appropriate.

E. Increased costs of complying with this Decree, or Defendant's financial ability to carry out the provisions of this Decree shall not be considered a Force Majeure event. Nor shall

Defendant's or Defendant's Representatives' failure to make complete and timely application for any required approval or permit be considered a Force Majeure event.

XVIII. CONTINUING JURISDICTION OF THE COURT

The Court shall retain jurisdiction to enforce the rights and obligations of the parties under this Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Decree.

XIX. TERMINATION AND POST-TERMINATION OBLIGATIONS

A. This Decree shall terminate when Defendant has completed all closure activities, including proper certification of closure, in accordance with the final approved Sebring Closure Plan (Section V.C) and the final approved Alliance Closure Plan (Section V.D); Defendant has, as necessary, in accordance with Section V.C and V.D, submitted and implemented for three years the Alliance Post-Closure Plan and the Sebring Post-closure Plan; Defendant has implemented fully and is in compliance with the Groundwater Requirements in accordance with Section V.E; Defendant certifies to U.S. EPA that it is in compliance with all generator and transporter requirements of this Decree (Sections V.A, V.B, and V.F); and Defendant has paid all civil and stipulated penalties due hereunder. Within thirty (30) days after Defendant believes it has fully complied with these requirements, it shall submit to U.S. EPA a certification of

compliance. If U.S. EPA concurs that Defendant has fully satisfied the terms of this Decree, the Parties shall file a joint motion with the Court to terminate this Decree.

B. If, at the time of termination, a closure plan developed under this Decree still requires Defendant to undertake further post-closure activities, Defendant shall complete such post-closure activities after termination. Plaintiff reserves the right to either reopen this action to enforce the requirements of the post-closure plan under the Decree or to bring a new action under RCRA to enforce the post-closure plan.

XX. CERTIFICATION REQUIREMENTS

All reports, documents and certifications made to U.S. EPA pursuant to the terms of this Decree must be true, accurate, and complete and attested to by a responsible corporate official. The form of attesting shall be as follows:

"I certify that the information contained in or accompanying this submission or document is true, accurate, and complete to the best of my knowledge. As to those identified portion(s) of this submission or document for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my instructions, made the verification, that this information is true, accurate, and complete, to the best of my knowledge."

A responsible corporate officer means: (a) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (b) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the Consumer Price Index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

XXI. NOTICE REQUIREMENTS

The parties acknowledge that final approval by the United States and the entry of this decree are subject to the Public Notice and Comment requirements of 28 C.F.R. § 50.7.

IT IS SO ORDERED, and the Decree is entered in accordance with the foregoing terms.

HONORABLE THOMAS LAMBROS
UNITED STATES DISTRICT COURT JUDGE
Northern District of Ohio

Date

The Parties enter into this Decree and submit it to the
Court that it may be approved and entered:

For Plaintiff, United States of America:

Vicki O'Meara
VICKI A. O'MEARA
Acting Assistant Attorney General
Environment and Natural Resources Division
Department of Justice

Date

9/1/92

JOYCE J. GEORGE
United States Attorney
Northern District of Ohio

By:

James L. Bickett
JAMES L. BICKETT
Assistant United States Attorney
Northern District of Ohio
1404 East Ninth Street
Suite 500
Cleveland, Ohio 44114-1748

Date

9/1/92

Herbert H. Tate, Jr.
HERBERT H. TATE, JR.
Assistant Administrator for
Enforcement
U.S. Environmental Protection Agency

9/6/92

Valdas V. Adamkus
VALDAS V. ADAMKUS
Regional Administrator
U.S. Environmental Protection Agency
Region V

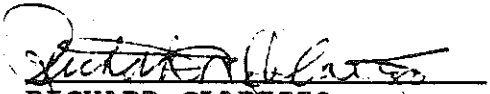
Date

9/02/92.


Gregory L. Sukys by SJW
GREGORY L. SUKYS,
Trial Attorney
United States Department of Justice
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Date

9/8/92


RICHARD CLARIZIO
Assistant Regional Counsel
U.S. EPA, Region V
77 West Jackson Blvd.
Chicago, Illinois 60604

9/3/92
Date


LAWRENCE I. SPERLING
Attorney-Advisor
U.S. Environmental Protection Agency
Washington, D.C. 20460

9/4/92
Date

FOR THE DEFENDANT, AMSTED INDUSTRIES, INC., (d/b/a) AMERICAN
STEEL FOUNDRIES



N. A. Berg

President, American Steel Foundries
Division of Amsted Industries, Inc.

8.19.92

Date

Consent Decree Signature Page for Decree in
United States v. Amsted Industries, Inc., Civil Action No.
C87-1284A (N.D. Ohio).